

1
2
3
4
5
6
7 IN THE UNITED STATES DISTRICT COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9
10
11 ANTHONY TORRES,) No. C 11-2638 JSW (PR)
12 Plaintiff,)
13 v.) **ORDER PROVIDING
14 G. LEWIS; MATTHEW CATE; G. PLAINTIFF NOTICE AND
KELLEY) WARNING; SCHEDULING
15 Defendant.) SUPPLEMENTAL BRIEFING**
16

17 Plaintiff, a California prisoner, filed this pro se civil rights action under 42 U.S.C.
18 § 1983. Defendants have filed a motion for summary judgment, which Plaintiff has
19 opposed. Pursuant to *Woods v. Carey*, No. 09-15548, slip op. 7871, 7884-85 (9th Cir.
20 July 6, 2012), the following notices and warnings are provided to Plaintiff a second time.

21 Plaintiff must read the following “NOTICE -- WARNING (SUMMARY
22 JUDGMENT),” which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952,
23 953-954 (9th Cir. 1998) (en banc), and *Klingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th
24 Cir. 1988). To the extent defendants argue that Plaintiff failed to exhaust his
25 administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff should also read
26 the “NOTICE -- WARNING (EXHAUSTION)” which is provided to him pursuant to
27 *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003):

1 NOTICE -- WARNING (SUMMARY JUDGMENT)

2 If defendants move for summary judgment, they are seeking to have your case
3 dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil
4 Procedure will, if granted, end your case.

5 Rule 56 tells you what you must do in order to oppose a motion for summary
6 judgment. Generally, summary judgment must be granted when there is no genuine issue
7 of material fact--that is, if there is no real dispute about any fact that would affect the
8 result of your case, the party who asked for summary judgment is entitled to judgment as
9 a matter of law, which will end your case. When a party you are suing makes a motion
10 for summary judgment that is properly supported by declarations (or other sworn
11 testimony), you cannot simply rely on what your complaint says. Instead, you must set
12 out specific facts in declarations, depositions, answers to interrogatories, or authenticated
13 documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's
14 declarations and documents and show that there is a genuine issue of material fact for
15 trial. If you do not submit your own evidence in opposition, summary judgment, if
16 appropriate, may be entered against you. If summary judgment is granted, your case will
17 be dismissed and there will be no trial.

18 NOTICE -- WARNING (EXHAUSTION)

19 If defendants file an unenumerated motion to dismiss for failure to exhaust, they
20 are seeking to have your case dismissed. If the motion is granted it will end your case.

21 You have the right to present any evidence you may have which tends to show
22 that you did exhaust your administrative remedies. Such evidence may be in the form of
23 declarations (statements signed under penalty of perjury) or authenticated documents,
24 that is, documents accompanied by a declaration showing where they came from and
25 why they are authentic, or other sworn papers, such as answers to interrogatories or
26 depositions.

27 If defendants file a motion to dismiss and it is granted, your case will be dismissed
28 and there will be no trial.

1 Plaintiff may file a supplemental opposition to Defendants' motion for summary
2 judgment on or before **August 1, 2012**. Defendants **shall** file a supplemental reply brief
3 within **7 days** of the date any supplemental opposition is filed. If Plaintiff does not
4 supplement his opposition, Defendants' motion will be decided on the papers that have
5 already been filed.

6 IT IS SO ORDERED.

7 DATED: July 11, 2012

8 
9 JEFFREY S. WHITE
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY TORRES,

Case Number: CV11-02638 JSW

Plaintiff,

CERTIFICATE OF SERVICE

V.

G. LEWIS et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 11, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Anthony Torres
Pelican Bay State Prison
P.O. Box 7500
#K59800
Crescent City, CA 95532

Dated: July 11, 2012

Jennifer Ottolini
Richard W. Wickline

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk